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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,716	06/23/2003	Christopher Donald Philipp	29997/053	8703
29471	7590	11/01/2005		EXAMINER
MCCRACKEN & FRANK LLP				HUSAR, STEPHEN F
200 W. ADAMS STREET				
SUITE 2150			ART UNIT	PAPER NUMBER
CHICAGO, IL 60606				2875

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/601,716	PHILIPP, CHRISTOPHER DONALD	
	<b>Examiner</b> Stephen F. Husar	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 August 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-10,12-33,35 and 37-56 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-10,12-33,35 and 37-56 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claims 23 and 46 is withdrawn in view of the newly discovered reference(s) to Ploetz (3218509). Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4,10,17,22-27,33,40,45,46,48,51, and 53-56 are rejected under 35 U.S.C. 102(b) as being anticipated by PLOETZ (3218509). Ploetz shows in Fig.3 a light source "27,29" located at the center point of a truncated hemisphere "54" made of crystalline material, quartz, the housing base "23" is a hollow cylinder whose upper end terminates in an inwardly extending flange "55". Note that the carbon arc lamp serves as a source of infrared light and that the quartz housing "54" is of uniform thickness.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 5-9 and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over PLOETZ (3218509). Claims 5-9 and 28-32 set forth housing thicknesses and diameters, which are not discussed in Ploetz. It has been held that changes in relative dimensions do not patentably distinguish the claimed invention from the prior art, *Gardner v. TEC Systems, Inc.* (Fed Cir. 1984). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide housing diameters and thicknesses commensurate with the size of the light source as well as ensuring structural integrity of PLOETZ's lamp device.

7. Claims 14-16,18,19,21,37-39,41-44, 49 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over JAFFE et al. (3715636) and further in view of PLOETZ (3218509). Jaffe et al shows the invention

substantially as claimed except for the material used in the truncated spherical housing. Ploetz shows that it is well known in the art to use a quartz material for its heat and light transmission properties (col.5, lines 39-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to use a quartz material in Jaffe et als. spherical housing as taught by Ploetz for the purpose and advantage of enhanced heat and light transmission.

8. Claims 12 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over PLOETZ (3218509) as applied to claims 1 and 24 above, and further in view of BEECH et al. (6670758). Ploetz shows the invention substantially as claimed except that the Ploetz's spherical housing is a crystalline material made of quartz and not sapphire as set forth in claims 12 and 35. Beech et al. shows that it is known in the art to use sapphire as an optical material in an arc lamp like Ploetz for the purpose improved thermal conduction. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute sapphire for Ploetz's quartz spherical window as taught by Beech et al. for the purpose and advantage of improved thermal conduction.

9. Claims 47 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over PLOETZ (3218509) as applied to claims 1 and 24 above, and further in view of PROPST et al. (5365345). Ploetz shows the invention substantially as claimed except that the Ploetz's spherical housing is a crystalline material made of quartz and not diamond as set forth in claims 47 and 50. Popst et al. shows that it is known in the art to use diamond as an optical material for the purpose improved infrared light transmission and hardness (see col.1, lines 21-31). It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute diamond for Ploetz's quartz spherical window as taught by Popst et al. for the purpose and advantage of improved hardness and infrared light transmission.

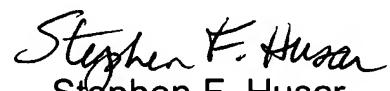
***Response to Arguments***

10. Applicant's arguments with respect to claims 1 and 24 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Husar whose telephone number is 571-272-2371. The examiner can normally be reached on M-W and F from 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen F. Husar  
Primary Examiner  
Art Unit 2875

SFH